



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2014-0592]

RIN 1625-AA11

Regulated Navigation Area, Lake Michigan; Chicago Harbor Lock, Chicago, IL to Calumet Harbor, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) for the waters of Lake Michigan within 5 nautical miles from shore from the Chicago Harbor Lock, Chicago, Illinois to Calumet Harbor, Chicago, Illinois. This RNA is intended to allow barges to transit on an alternate route on a portion of Lake Michigan due to the temporary closure of the Thomas J. O'Brien Lock on RM 326.5 on the Calumet River. This RNA is necessary to ensure vessel safety and facilitate commerce.

DATES: This rule is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until March 31, 2015. This rule has been enforced with actual notice from November

1, 2014 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] .

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2014-0592. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or email MST1 John Ng, U.S. Coast Guard Marine Safety Unit Chicago, at 630-986-2155 or John.H.Ng@uscg.mil. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 1-800-647-5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of Proposed Rulemaking
RNA	Regulated Navigation Area
TFR	Temporary Final Rule

A. Regulatory History and Information

On September 4, 2014, the Coast Guard published an NPRM in the Federal Register entitled "Regulated Navigation Area; Lake Michigan, Chicago Harbor Lock, Chicago, IL to Calumet Harbor, Chicago, IL" (79 FR 52591). We received two comments in response to the NRPM. Those comments are addressed below. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. On June 4, 2014, the Coast Guard, industry stakeholders, and the Army Corps of Engineers discussed the closure of the Thomas J. O'Brien Lock and alternatives for affected barge traffic. The need for an RNA arose out of these discussions, and the Coast Guard began the rulemaking process for a temporary RNA. However, there was insufficient time for both notice and comment and delaying the effective date of the rule. Waiting 30 days after publication to make the rule effective would be impracticable and contrary to the public interest because it would not allow the RNA to be enforced starting after November 1, 2014, when it is needed to ensure vessel safety and facilitate commerce.

B. Basis and Purpose

The legal basis for this rule is the Coast Guard's authority to establish RNAs and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

Between November 3, 2014, and March 6, 2015, the United States Army Corps of Engineers anticipates closing the Thomas J. O'Brien Lock for two 47-day periods in order to perform maintenance on the lock. The Thomas J. O'Brien Lock closures present a significant challenge to the barge industry and an alternate route is necessary in order to sustain commerce. Further, safe operating requirements for this temporary alternate route are necessary to ensure safety of transiting barge traffic.

C. Discussion of Comments, Changes and the Final Rule

We received two comments in response to the NPRM. The first comment indicated that the environmental analysis for the proposed rule lacked information about the environmental impact of barge traffic. This comment recommends the inclusion of relevant studies, if any, on the impact of barge traffic on the environment in the proposed rule's environmental analysis.

We have made no change to the final rule in light of this comment. The environmental checklist and categorical

exclusion, included in the docket, address the environmental analysis of this rule. In short, we determined after a thorough review, that the application of U.S. Coast Guard categorical exclusion 34(g) is appropriate in this case. Having made this determination, no further environmental analysis and documentation is required. However, as we note later on, we welcome any comments or information that may lead to discovery of a significant environmental impact from this rule.

A second comment voiced support for the temporary RNA as a practical solution for commercial traffic during the closure of the Thomas J. O'Brien Lock. We made no change to the final rule in light of this comment.

Further, we have made editorial changes to the regulatory text of the rule for clarification. As to the first change, we've inserted the phrase "within the effective period" under paragraph 2(b) of the regulatory text. This phrase explains that any change in the enforcement period for which we give notice will occur within the effective period of the rule (November 1, 2014 to March 31, 2015). We further deleted the phrase "In accordance with 46 CFR 45.171" and added the word "same" under paragraph 2(c)(1) to clarify that only certain provisions of 46 CFR 45.171 are adopted for purposes of this

rule; these provisions include the "same" requirements for voyages between Burns Harbor, Indiana and Calumet Harbor, Chicago, Illinois as reflected in Table 45.171.

D. Discussion of the Final Rule

This RNA is necessary to facilitate commerce and establish safe operating requirements for this temporary alternate route. Thus, this rule establishes an RNA on the waters of Lake Michigan, between Chicago Harbor Lock, Chicago, Illinois and Calumet Harbor, Chicago, Illinois, within 5 nautical miles from shore.

This RNA will be effective and enforced from November 1, 2014, through March 31, 2015. The effective period for this RNA is broader than the anticipated closure dates of the Thomas J. O'Brien Lock and Dam to account for unexpected changes in schedule. In the event of a change in the enforcement dates and times, the Ninth District Commander will provide notice to the public by issuing a Notice of Enforcement for publication in the Federal Register, and announcing a Broadcast Notice to Mariners.

Inspected and uninspected river barges transiting this RNA need to operate in accordance with temporary 33 CFR 165.T09-0592 described below:

Uninspected dry cargo barges.

Unmanned dry cargo river barges transiting between

Chicago Harbor Lock, Chicago, Illinois and Calumet Harbor, Chicago, Illinois must meet the same requirements for voyages between Burns Harbor, Indiana and Calumet Harbor, Chicago, Illinois outlined in Table 45.171 of 46 CFR 45.171, as follows:

- Load line requirement: Conditionally exempted from load line assignment.
- Where to register/apply: Exempted barges must be registered with the USCG Marine Safety Unit Chicago, 555A Plainfield Road, Willowbrook, IL 60527; Fax (630) 986-2120.
- Eligible barges are dry cargo river barges, built and maintained in accordance with ABS River Rules, Length-to-depth ratio is less than 22, and all weathertight and watertight closures are in proper working condition. There is no age limitation.
- Barges freeboard must be at least 24 inches (610mm). On open hopper barges, the coaming height + freeboard must be at least 54 inches (1,372 mm).
- Tow limitations: Barges must be unmanned. Barges must transit within 5 nautical miles from shore. There is no limit on the number of barges in tow.
- Cargo limitations: Dry cargoes only. Liquid cargoes,

even in drums or tank containers, are prohibited. No hazardous materials. HazMats are defined in 46 CFR part 148 and 49 CFR chapter 1, subchapter C.

- Weather limitations: Voyages will be conducted in "Fair weather" only. If worse conditions arise during the transit, the voyage must be discontinued and tow must proceed to shelter.
- Pre-departure preparations: Required; as specified in 46 CFR 45.191.
- Tow requirements:
 - Power: sufficient to handle tow.
 - Communication system: Recommended; 46 CFR 45.195(a).
 - Cutting gear: Recommended; 46 CFR 45.195(b).
 - Operational plan: Recommended; 46 CFR 45.197.

Coast Guard inspected river barges.

Unmanned inspected river barges operating between Chicago Harbor Lock, Chicago, Illinois and Calumet Harbor, Chicago, Illinois must meet the following requirements:

- Markings: Great Lakes diamond without seasonal marks.
- Stability: Applicable 46 CFR subchapter S requirements.
- Strength: ABS Rules for Rivers and Intracoastal Waterways.

Tank barges over 300 feet in length must have loading

information per 46 CFR 31.10-32.

- Freeboard: Dry cargo and tank barges are to comply with the freeboard requirements of 46 CFR Part 45. Dry cargo barges will not be assessed penalties for hatch coaming or hatch cover deficiencies.
- Load Line Certificate: Great Lakes certificate with the following notation: *"This certificate is valid only for unmanned fair weather voyages between Calumet Harbor, Chicago, Illinois and Burns Harbor, Indiana."*
- Operating restrictions: Voyages will be conducted in "Fair weather" only. If worse conditions arise during the transit, the voyage must be discontinued and tow must proceed to shelter. Barges must transit within 5 nautical miles of shore.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential

costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The RNA is intended to facilitate commerce and will not restrict navigation because it will allow barges to transit an additional route without making any changes to the current barge requirements. Overall, we expect the economic impact of this rule to be minimal and that a full Regulatory Evaluation is unnecessary.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S. C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a

significant economic impact on a substantial number of small entities.

This regulated navigation area will not have a significant economic impact on a substantial number of small entities because it is intended to facilitate commerce and will not restrict navigation because it will allow barges to transit an additional route without making any changes to the current barge requirements. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Heidi Bragalone, Waterways Management Branch, Coast Guard Marine Safety Unit

Chicago, Willowbrook, IL at (630) 986-2131. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or

risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not

individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a regulated navigation area and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of

Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0592 to read as follows:

§ 165.T09-0592 Regulated Navigation Area, Lake Michigan;
Chicago Harbor Lock, Chicago, IL to Calumet Harbor, Chicago,
IL.

(a) Location. All waters of Lake Michigan, between Chicago Harbor Lock, Chicago, Illinois, to Calumet Harbor, Chicago, Illinois, extending within 5 nautical miles from shore.

(b) Effective period and enforcement. The regulated navigation area described in paragraph (a) of this section will be effective from November 1, 2014, through March 31, 2015. This section is expected to be enforced from November 1, 2014, through March 31, 2015, but the enforcement dates and times for this regulated navigation area are subject to change. In the event of a change within the effective period, the Ninth District Commander will provide notice to the public by issuing a Notice of Enforcement for publication in the Federal Register, and announcing a Broadcast Notice to Mariners.

(c) Regulations. (1) Unmanned dry cargo river barges transiting between Chicago Harbor Lock, Chicago, Illinois and Calumet Harbor, Chicago, Illinois must meet the same requirements for voyages between Burns Harbor, Indiana and

Calumet Harbor, Chicago, Illinois, outlined in Table 45.171 of 46 CFR 45.171, as follows:

(i) Load line requirement: Conditionally exempted from load line assignment.

(ii) Where to register/apply: Exempted barges must be registered with the USCG Marine Safety Unit, 555A Plainfield Road, Willowbrook, IL 60527; Fax (630) 986-2120.

(iii) Eligible barges are dry cargo river barges, built and maintained in accordance with ABS River Rules, Length-to-depth ratio is less than 22, and all weathertight and watertight closures are in proper working condition. There is no age limitation.

(iv) Barges freeboard must be at least 24 inches (610mm). On open hopper barges, the coaming height + freeboard must be at least 54 inches (1,372 mm)

(v) Tow limitations: Barges must be unmanned. Barges must transit within 5 nautical miles from shore. There is no limit on the number of barges in tow.

(vi) Cargo limitations: Dry cargoes only. Liquid cargoes, even in drums or tank containers, are prohibited. No hazardous materials. Hazardous materials are defined in 46 CFR part 148 and 49 CFR chapter 1, subchapter C.

(vii) Weather limitations: Voyages will be conducted in "Fair weather" only. If worse conditions arise during the

transit, the voyage must be discontinued and tow must proceed to shelter.

(viii) Pre-departure preparations: Required; as specified in 46 CFR 45.191.

(ix) Tow requirements:

(A) Power: sufficient to handle tow.

(B) Communication system: Recommended; 46 CFR 45.195(a).

(C) Cutting gear: Recommended; 46 CFR 45.195(b).

(D) Operational plan: Recommended; 46 CFR 45.197.

(2) Unmanned inspected river barges operating between Chicago Harbor Lock, Chicago, Illinois and Calumet Harbor, Chicago, Illinois must meet the following requirements:

(i) Markings: Great Lakes diamond without seasonal marks.

(ii) Stability: Applicable 46 CFR subchapter S requirements.

(iii) Strength: ABS Rules for Rivers and Intracoastal Waterways. Tank barges over 300 feet in length must have loading information per 46 CFR 31.10-32.

(iv) Freeboard: Dry cargo and tank barges are to comply with the freeboard requirements of 46 CFR Part 45. Dry cargo barges will not be assessed penalties for hatch

coaming or hatch cover deficiencies.

(v) Load Line Certificate: Great Lakes certificate with the following notation: *"This certificate is valid only for unmanned fair weather voyages between Calumet Harbor, Chicago, Illinois and Burns Harbor, Indiana."*

(vi) Operating restrictions: Voyages will be conducted in "Fair weather" only. If worse conditions arise during the transit, the voyage must be discontinued and tow must proceed to shelter. Barges must transit within 5 nautical miles from shore.

Dated: October 30, 2014.

F.M. MIDGETTE,
Rear Admiral, U. S. Coast Guard,
Commander, Ninth Coast Guard District.

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